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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,140	02/27/2002	Cory M. Panattoni	002558-067300US	4424
20350	7590	10/17/2003	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				YOON, TAE H
ART UNIT		PAPER NUMBER		
		1734		

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/087,140	PANATTONI, CORY M.
	<b>Examiner</b>	<b>Art Unit</b>
	Tae H Yoon	1714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 29 September 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

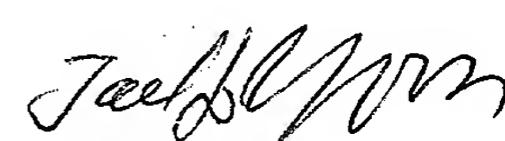
Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.
9.  Note the attached Information Disclosure Statement(s) ( PTO-1449) Paper No(s). \_\_\_\_\_.
10.  Other: \_\_\_\_\_.

  
 Tae H Yoon  
 Primary Examiner  
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**ATTACHMENT TO ADVISORY ACTION**

All rejection is maintained for reason of record and following response.

Hochstrasser et al teach the instant composition and Alpenfels et al and Lau et al teach the advantage of using plastic gel enclosure or mold over glass enclosure or mold. Applicant failed to show any unexpected result of using a plastic gel enclosure over a glass enclosure in Hochstrasser et al. Note that the examiner has addressed the method by stating --"thus it is a *prima facie* obviousness to one skilled art in the art to use plastic gel enclosure or mold in Hochstrasser et al with teaching of Alpenfels et al and without the instant disclosure" in the last office action.

Applicant asserts that no single reference disclose two elements, and that is why the office action contains an obviousness rejections, not an anticipation.

The recited "Alss" was an obvious typo of "Also", and the whole sentence is clear as evidenced by applicant statement regarding air permeability.

Applicant states that even if it has "little air permeability" this still indicates air permeability. However, said "little air permeability" is also dependent on the duration (time) of an exposure to the air, and thus said "little air permeability" would not have any effect on a short polymerization time such as an hour or so, rather than 24 hours for example.

Applicant asserts that the examples and comparative examples show the advantage or unexpected result. However, a comparison must be based on the closest prior art or the rejection, and not on applicant's own choice. Again, applicant failed to show any unexpected result of using a plastic gel enclosure over a glass enclosure in Hochstrasser et al who already teach the instant

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composition. Thus, an argument with respect to the presence or absence of sodium sulfite or any other oxygen scavenger has no probative value.

With respect to Alpenfels et al in view of Flesher et al or Saunders, the examiner believes that the use of Flesher et al or Saunders with Alpenfels et al is a proper combination since Flesher et al and Saunders (even though they teach dewatering and flocculation) teach the use redox catalyst system comprising sodium sulfite in an aqueous polymerization which involves in a basic polymer chemistry. Thus, the fundamental chemical reaction, the use of said redox catalyst system, of Flesher et al or Saunders is related to that of Alpenfels et al contrary to applicant's assertion. The examiner noticed that applicant also uses US Pats. 4,925,578 and 5,362,408 in order to address the oxygen scavengers, however, said patents are related to the gel used in oil recovery which is unrelated to the instant invention and Ogawa. Thus, if the examiner's position has no probative value, and then applicant's position using said US Pats. 4,925,578 and 5,362,408 has no probative value either. Applicant's double standard lack any merit.

With respect to rejection based on Ogawa (US 4,806,434) in view of Hochstrasser et al (US 5,292,665), Flesher et al (US 4,940,763) or Saunders (US 3,755,280), and further in view of Alpenfels et al (US 5,753,095) or Lau et al (US 6,110,340).

Applicant uses US Pats. 4,925,578 and 5,362,408 in order to address the oxygen scavengers, however, said patents are related to the gel used in oil recovery which is unrelated to

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the instant invention and Ogawa. Thus, it has no merit if applicant's assertion regarding the above Alpenfels et al in view of Flesher er al or Saunders has merit. However, the examiner believes that the use of any reference showing the fundamental chemistry regardless of its field would have a probative value. Said US Pats. 4,925,578 and 5,362,408 teach some difference between an oxygen scavenger and reducer. However, Ogawa does not use a term, oxygen reducer, but an oxygen inhibitor and thus applicant's argument fell short. If applicant's argument is on the target, the examiner points out that Ogawa teach mercaptor compounds being examples and the teaching is not limited to the example. Besides, Hochstrasser et al calls the instant thiosulfate and bisulfite as "oxygen-reducing agents" at col. 10, lines 13 and 25-34, and thus the use of the art well known oxygen reducing or scavenging agents in Ogawa would be a *prima facie* obviousness and applicant failed to show otherwise. A particular definition of the word or term is needed in every disclosure in order to find a true meaning of the word or term used in each disclosure.

Applicant teaches that certain oxygen scavengers display catalytic activity toward the free radical reaction in [12] of the specification, and thus applicant teaches true oxygen inhibitors as well as oxidation reducing agents being the oxygen scavengers (mentioned in US Pat. 4,925,578) since said oxidation reducing agents display catalytic activity toward the free radical reaction. The mercaptor compounds taught by Ogawa would fall in such category, oxidation reducing agents. Besides, Ogawa clearly teaches employing oxidation inhibitors employable for the gel membrane for electrophoresis at col. 13, lines 36-39, and again the use of the art well known oxygen reducing or scavenging agents in Ogawa would be a *prima facie* obviousness.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H. Yoon whose telephone number is (703) 308-2389. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 306-2777. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

THY/October 11, 2003

*Tae H. Yoon*  
TAE H. YOON  
PRIMARY EXAMINER